

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

GUILLERMO ESCOBEDO,
Petitioner,
vs.
KEN BURGER,
Respondent.

No. C05-4039-LRR

ORDER

This matter is before the court on the petitioner's "motion to stay petition pending exhaustion of state remedies" (Docket No. 13). The petitioner filed such motion on September 26, 2005. The respondent filed a response (Docket No. 14) on October 4, 2005.

In his motion, the petitioner asks the court to stay the instant action so that he can exhaust his state remedies. Alternatively, the petitioner asks the court to dismiss the instant action without prejudice. In its response, the respondent agrees with the petitioner's assertion that the pending petition should be dismissed without prejudice. Given the parties' assertions, the court deems it appropriate to dismiss the instant action without prejudice. *See* 28 U.S.C. § 2254(b),(c). Accordingly, the petitioner's "motion to stay petition pending exhaustion of state remedies" (Docket No. 13) is denied.

The Clerk of Court is directed to dismiss the petitioner's 28 U.S.C. § 2254 action without prejudice.

IT IS SO ORDERED.

DATED this 26th day of October, 2005.



LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA